

Introduced by Senator MurrayFebruary 19, 2004

An act to amend Section 653v of, and to add Section 653aa to the Penal Code, relating to Internet piracy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1506, as introduced, Murray. Internet piracy.

Existing federal law, through copyright, provides authors of original works of authorship, as defined, with certain rights and protections. Existing federal law generally gives the owner of the copyright the right to reproduce the work in copies or phonorecords and the right to distribute copies or phonorecords of the work to the public. Existing federal law limits the liability of an Internet service provider for copyright infringement for transmitting material under specified conditions. Existing law also provides for the forfeiture and destruction of articles upon which sounds or images can be stored, and electronic and other devices used in reproducing those articles, in connection with a violation of provisions prohibiting misappropriation of recorded music, sounds of a live performance, or an audiovisual works, as specified.

This bill would provide that it is a crime, punishable by a fine not exceeding \$2,500, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment for a person who is not the copyright owner to knowingly electronically disseminate a commercial recording or audiovisual work without disclosing his or her true name and address, and the title of the recording or audiovisual work. This bill would define electronic dissemination as initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution on the Internet or other



digital network, as specified. This bill would provide that this provision would not apply to a person who electronically disseminates a commercial recording to his or her immediate family or within his or her personal network, as defined. This bill would also provide that a court may order the forfeiture and destruction of articles upon which sounds or images can be stored, electronic files, and electronic and other devices in connection with a violation of these provisions.

Because this bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 653v of the Penal Code is amended to
2 read:

3 653v. Whenever any person is convicted of any violation of
4 Section 653h, 653s, 653u, ~~or~~ 653w, *or* 653aa the court, in its
5 judgment of conviction, shall, in addition to the penalty therein
6 prescribed, order the forfeiture and destruction or other disposition
7 of all articles, including, but not limited to, phonograph records,
8 discs, wires, tapes, films, *electronic files*, or any other article upon
9 which sounds or images can be recorded or stored, and any and all
10 electronic, mechanical, or other devices for manufacturing,
11 reproducing or assembling these articles, which were used in
12 connection with, or which were part of, any violation of Section
13 653h, 653s, 653u, or 653w.

14 SEC. 2. Section 653aa is added to the Penal Code, to read:

15 653aa. (a) Any person who is not the copyright owner who
16 knowingly electronically disseminates a commercial recording or
17 audiovisual work without disclosing his or her true name and
18 address, and the title of the recording or audiovisual work is
19 punishable by a fine not exceeding two thousand five hundred



dollars (\$2,500), imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

(b) Subdivision (a) does not apply to a person who electronically disseminates a commercial recording or audiovisual work to his or her immediate family, or within his or her personal network, defined as a restricted access network controlled solely by that person or people in his or her immediate household.

(c) For purposes of this section:

(1) “Recordings” means the electronic or physical embodiment of any recorded images, sounds, or images and sounds.

(2) “Audiovisual works” means the electronic or physical embodiment of motion pictures, television programs, or other dramatic audiovisual presentations that consist of related images that are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, or a computer program, software, or system, as defined in Section 502, together with accompanying sounds, if any.

(3) “Commercial recording or audiovisual work” means a recording or audiovisual work whose copyright owner, or assignee, authorized agent, or licensee, has made or intends to make available for sale, rental, or for performance or exhibition under license. A recording or audiovisual work may be commercial regardless of whether the person who electronically disseminates it personally seeks commercial advantage or private financial gain from that dissemination.

(4) “Electronic dissemination” means initiating a transmission of, making available, or otherwise offering a commercial recording or audiovisual work for distribution on the Internet or other digital network, regardless of whether someone else had previously electronically disseminated the same commercial recording or audiovisual work.

(5) “True name and address” means information that accurately identifies the name of the person who is disseminating the commercial recording or audiovisual work, along with his or her valid e-mail or mailing address.

(6) “Disclosing” means providing information in, attached to, or discernable or available in or through the process of obtaining a commercial recording or audiovisual work.

1 (d) Nothing in this section shall preclude prosecution under any
2 other provision of law.

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

